

**MINUTES OF THE
JUDICIAL RETENTION ELECTION TASK FORCE**

Tuesday, August 14, 2007 – 8:00 a.m. – Room W130 House Building

Members Present:

Sen. D. Chris Butters, Senate Chair
Rep. Curtis Oda, House Chair
Sen. Gregory S. Bell
Sen. Lyle W. Hillyard
Sen. Ross I. Romero
Rep. Jackie Biskupski
Rep. DeMar Bud Bowman
Rep. Glenn A. Donnelson
Rep. Rosalind J. McGee
Rep. Lorie D. Fowlke
Judge Hans Q. Chamberlain
Chief Justice Christine M. Durham
Judge Gary D. Stott

Members Absent:

Rep. Eric K. Hutchings

Staff Present:

Mr. Mark B. Steinagel, Policy Analyst
Ms. Esther Chelsea-McCarty, Associate General Counsel
Mr. Christopher R. Parker, Associate General Counsel
Ms. Amanda Majers, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

Chair Oda called the meeting to order at 8:15 a.m. He noted that Rep. Fowlke replaced Rep. Wyatt on the Task Force, because Rep. Wyatt accepted a new position as president of Snow College. Chair Oda also introduced Amanda Majers, the new staff secretary.

MOTION: Rep. Donnelson moved to approve the minutes of the June 19, 2007 meeting. The motion passed unanimously with Sen. Hillyard absent for the vote.

Chair Oda turned the meeting over to Sen. Butters and staff to discuss the attorney survey and the minimum standards of judicial performance and certification process.

2. Judicial Retention

Sen. Butters voiced concern about the Legislature's fulfillment of its role of informing the public about judicial retention candidates. He noted that currently the voter information pamphlet does not adequately provide the public with the information to sort the good judges from the bad. Sen. Butters concluded that if the judicial retention election process and voter information pamphlet are not adequate it is the Legislature's fault, and its responsibility to resolve the problem.

A. Attorney Survey

Mr. Steinagel discussed the attorney survey, and detailed the reasons why there is not a strong correlation between the attorney survey response scores in the voter information pamphlet and the actual retention vote percentage that a judge receives. He then raised the question of whether the survey's timing should cover more than two out of six years of a judge's term of office.

Sen. Butters stated his concern that a judge's full term is not considered. Chief Justice Durham explained that a judge's full term is not considered due to the logistical demands of conducting the survey.

Sen. Buttars responded that concerns for saving money should not outweigh the benefit of broadening the number of respondents for the survey.

Mr. Steinagel posed the question of whether the attorney survey respondent pool should be increased. He then noted several ways the respondent pool could be increased by expanding the time frame and the survey to include court employees, law enforcement officials, and guardians ad litem. Mr. Steinagel then discussed how the respondent pool was further restricted by referring to, "2006: Selected Rules of Judicial Administration Governing Judicial Performance Evaluation and Certification for Retention," which was mailed prior to the meeting.

Sen. Buttars argued that the restrictions create problems, and that by expanding the respondent pool the public would have a better look at the judges.

Mr. Steinagel explained that the attorney questions include one of the ways in which attorneys can be excluded from the respondent pool; in that, a judge may exclude an attorney for bias.

Sen. Bell asked if the Task Force was going to find out how objections to an attorney are handled internally. Chief Justice Durham responded that, of those requests for exclusion that came before the judicial counsel, only two out of sixty-two judges were granted an exclusion.

Mr. Steinagel discussed whether the survey questions effectively measure the important indicators they were designed to measure. He also referred to excerpts from, "2006 Voter Information Pamphlet."

Sen. Buttars noted that the attorney survey is set up to get the total favorable score for a judge by adding the scores of excellent, more than adequate, and adequate together, and by doing so a judge who scored 100 percent adequate and a judge who scored 100 percent excellent would both receive a 100 percent performance score. He argued that, in this way, the survey confuses adequacy and excellence confounding the process by making it impossible to distinguish the good from the bad judges.

Mr. Steinagel then reviewed the method and reporting of scoring in the attorney survey, and discussed the simplification of the information in the voter pamphlet while still providing good information to the voter. After his presentation, Mr. Steinagel answered questions posed by the Task Force.

B. Minimum Standards of Performance and Certification

Mr. Parker gave a presentation on the Minimum Standards of Performance and Certification.

Sen. Buttars, Chief Justice Durham, and Sen. Hillyard discussed the performance standard concerning a judge's ability to self-certify that the judge is physically and mentally able to perform his or her duties.

Mr. Parker remarked on the substantial compliance standard, and distributed a handout entitled, "Measuring Compliance with the Code of Judicial Conduct for Certification Purposes," which showed how the substantial compliance standards have changed since 1992. He also noted that it is hard to know what certification means because there are no other consequences besides a note in the voter information pamphlet.

The Task Force discussed Mr. Parker's review of the minimum standards of performance and certification.

Sen. Buttars summarized that in the current judicial retention election the voter information pamphlet does not effect a judge's retention. He noted that it is only when outside factors, like the press or a group of citizens, organize campaigns that a judge is not retained. Sen. Buttars advocated that the current voter information pamphlet needs to be set aside, so that a new pamphlet can be designed that will assist the public.

MOTION: Rep. Donnelson moved to set aside the voter information pamphlet, and to create a working group to design a new pamphlet and to come up with some ideas to simplify the pamphlet.

The task force members discussed the motion.

SUBSTITUTE MOTION: Sen. Bell moved that the Task Force not set aside the voter pamphlet, but still create a working group to design a new pamphlet. The motion passed unanimously.

3. Other Business / Adjourn

MOTION: Rep. Donnelson moved to adjourn the meeting. The motion passed unanimously.

Chair Oda adjourned the meeting at 10:01 a.m.